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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-212220.2 **DATE:** May 30, 1984

MATTER OF: Apex International Management Services, Inc.

DIGEST:

1. Post-bid-opening protest against agency's failure to specify in laundry service solicitation a value for the cost of replacing equipment at agency's laundry facility is untimely. Under GAO's Bid Protest Procedures, protests against apparent solicitation improprieties must be filed prior to bid opening. The solicitation clearly stated that the value of all the award evaluation factors would not be made available until bid opening.

2. Protest against adding new equipment costs to protester's bid based on a 10-year depreciation schedule for the equipment is denied where the protester has not shown that the agency's use of such a schedule was unreasonable. Use of 10-year depreciation reflects agency's policy determination to adopt the guidelines of the Internal Revenue Service for depreciating laundry equipment in order to determine successful bidder.

3. GAO will not question an agency's assessment of its needs unless the protester demonstrates that the determination is clearly unreasonable. GAO finds that the protester has failed to show that the agency's need for $881,000 worth of new laundry equipment was unreasonable.

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4. An agency may not evaluate bids in a manner that is inconsistent with the evaluation scheme set forth in the solicitation. To permit otherwise would be contrary to the legal requirement that all evaluation factors be made known in advance of bid opening so that all bidders can compete on an equal basis. Since the IFB did not provide for using projected new laundry equipment costs to evaluate the bid of a bidder who would perform the laundry service work at its own facility, it would not have been proper, as urged by the protester, for the agency to have evaluated such a bidder's bid on this basis.

Apex International Management Services, Inc. (Apex), protests the evaluation of bids received in response to invitation for bids (IFB) M67001-83-B-0005 issued May 28, 1983, by the Department of the Navy, United States Marine Corps. The IFB was for laundry services at the Marine Corps Base, Camp Lejeune, North Carolina, for a period of 1 year with two 1-year options. The IFB was also part of a cost comparison, pursuant to Office of Management and Budget (OMB) Circular A-76 to determine whether the laundry service work should be performed in-house using government employees or whether it would be more advantageous to the government to perform the work by contract. A comparison of the various bids submitted at the August 2, 1983, bid opening with the estimated costs of in-house performance revealed that the cost of in-house performance would be higher than performance by contract.

The IFB invited bids on the basis of either a government-owned, contractor-operated (GOCO) commercial operation or on the basis of a contractor-owned, contractor-operated (COCO) commercial operation. The IFB further specified certain evaluation factors for determining award between GOCO and COCO bids. Apex submitted the low GOCO bid. The low COCO bid was submitted by National Linen Service, Inc. (National). The Marine Corps ultimately concluded that National's bid was low.

Apex objects to the Marine Corps' evaluation and determination that its GOCO bid was not low. For the reasons set forth below, we dismiss the protest in part and deny it in part.

Background

Paragraph M-9 of the original IFB set forth the following adjustments in evaluating the GOCO and COCO bids:

> "BASIS FOR AWARD: COST COMPARISON EVALUATION GOCO VERSUS COCO OPERATIONS.
>
> "A. THE GOVERNMENT'S OPERATING COST ESTIMATE FACTORS AS LISTED BELOW SHALL BE AN EVALUATION FACTOR . . . AND SHALL BE ADDED TO ALL BIDS RECEIVED FOR BOTH METHODS OF OPERATION. THE AGGREGATE TOTALS FOR EACH FISCAL YEAR WILL BE ADDED BY THE CONTRACTING OFFICER TO THE CORRESPONDING AGGREGATE TOTALS CONTAINED IN THE BIDDER'S 'BID SCHEDULE':
>
> "(1) ADD TO GOCO BIDS:

	FY 84	FY 85	FY 86
MATERIALS COST	____	____	____
UTILITIES COST	____	____	____
INFLATION	____	____	____
COST OF CAPITAL	____	____	____
"(2) ADD TO COCO BIDS:			
STANDBY MAINTENANCE COST	____	____	____
BLDG. RENOVATION COST	____	____	____

> NOTE: THE VALUE OF THE EVALUATIVE FACTORS AND THE METHOD OF THEIR COMPUTATION WILL BE MADE AVAILABLE AT BID OPENING."

Following the issuance of the IFB, the Marine Corps contracting personnnel became aware from an audit of the government's in-house cost estimate by the Naval Audit Service that a change in the evaluation factors contained in paragraph M-9 of the IFB was necessary. Accordingly, paragraph M-9 of the IFB was amended by amendment 0004 to read as follows:

(1) GOCO ADD-ON	1st year	2d year	3rd year	Total
Direct Materials	____	____	____	____
Operations Overhead	____	____	____	____
Inflation	____	____	____	____
Cost of Capital				
Other Costs (System Renovation)	____	____	____	____
Total	____	____	____	____

(2) COCO ADD-ON	1st year	2d year	3rd year	Total
Standby Maintenance	____	____	____	____
Other Cost (Bldg. Renovation)	____	____	____	____
Total	____	____	____	____

At bid opening, Apex submitted a total GOCO bid of $1,340,882.55 for the 3 contract years. National's total COCO bid was $2,004,822. $567,646 in "add-ons" were added to Apex's bid, bringing Apex's total evaluated bid to $1,908,528.55. $17,765 in add-ons were added to National's bid, bringing National's total evaluated bid to $2,022,587. However, approximately 2 weeks after bid opening, the Marine Corps notified the bidders in writing that the preliminary evaluations results were miscalculated because laundry equipment replacement cost (and attendant depreciation expense to be charged to a GOCO bid) had not been taken into account, thus understating the figures for cost of capital and operations in the GOCO add-ons. The bidders were also furnished with a revised cost evaluation which raised Apex's total evaluated bid to $2,049,921.55. The contracting officer's explanation to bidders of the revised evaluation reads as follows:

> "This letter is to inform you that the Contracting Officer has determined that the original tentative results were inaccurately calculated. The tentative results have been redetermined . . . In reviewing the sub-criteria for cost of capital and renovation cost, the Contracting Officer determined that an omission occurred due to the ambiguous

> restrictions of Title 10 funding for laundry equipment that inadvertently resulted in budgeted equipment replacement cost not being counted. The Contracting Officer determined that this omission constituted a correctable mistake since the intended budget and its necessity were self-evident, and provable for application purposes. The Contracting Officer amended the sub-criteria of the evaluation factors for cost of capital and renovation cost to reflect the million dollar budget and other associated cost of transportation, installation and depreciation. The installation of the budgeted new equipment in 1984 and 1985 was determined to be critical due to the average life of the existing equipment measured to be in excess of 20 years. This fact was made known to all bidders during the Pre-Bid Conference and site visit, thereby, constituting admissible data to correct a mistake in accordance with the DAR."

Timeliness

Apex argues that the Marine Corps should have disclosed the approximate dollar value ($1 million) of the laundry equipment replacement cost in the IFB so that new equipment depreciation cost could be calculated. According to the Marine Corps, this argument is untimely raised since Apex should have allegedly known from the provisions of paragraph M-9 of the IFB, as amended, that there would be a need to replace much of the existing equipment at Camp Lejeune during the life of the contract if award was made to a GOCO bidder and that all equipment costs, including equipment depreciation, would be lodged against the bids of GOCO bidders. The Marine Corps admits that the estimated costs of new equipment depreciation were not known to prospective bidders prior to bid opening. However, the Marine Corps emphasizes that it was clear on the face of the IFB that the actual dollar amounts of the "evaluative factors" listed in paragraph M-9 were not being disclosed so that Apex should have raised the lack of such amounts prior to bid opening.

Apex concedes that any perceived deficiencies in the IFB should have been protested prior to bid opening. Apex goes on to argue, however, that it had no way of knowing prior to bid opening that the Marine Corps had determined to replace $881,000 worth of laundry equipment if the Camp Lejeune laundry facility was to continue in active use.

Apex emphasizes, moreover, that it assumed that existing equipment at Camp Lejeune would be replaced, consistent with common sense, only as needed. And Apex notes that the Marine Corps' contracting officer's memorandum on the prebid conference indicated that obsolete laundry machinery would be replaced "over the next 5 years." Thus, Apex asserts that it had every reason to conclude that only obsolete laundry machinery would be replaced and then over a 5-year period.

GAO Analysis

We find that Apex's protest on this issue is untimely. Amendment 0004 to the IFB provided that "system renovation" costs would be added to GOCO bids in evaluating whether to award on the basis of a GOCO operation or a COCO operation. Apex does not contend that laundry equipment replacement is outside the scope of what would constitute "system renovation"--even if, as might be the case, the Marine Corps originally (and erroneously) considered that statutory funding restrictions precluded replacement of the equipment and evaluation of the cost of the equipment in comparing bids. Rather, Apex emphasizes the fact that it had no way of knowing prior to bid opening that the Marine Corps intended to replace $881,000 worth of laundry equipment if the Camp Lejeune laundry facility was to continue in active use. However, as noted by the Marine Corps, the IFB made it clear that the value of the award factors and the methods of their computation would not be made available until bid opening.

As to Apex's argument that it had assumed from the statements of the contracting officer at the prebid conference that only "obsolete" equipment would be replaced, we think that the company is merely claiming that it expected a lower figure for new equipment cost than the $881,000 estimated by the Marine Corps. Obviously, "obsolete" equipment could include a wide range of equipment--even outmoded equipment in good working order. Similarly, we do not agree that Apex should have reasonably interpreted the contracting officer's statement about replacement "over the next five years" as ruling out the possibility that the entire replacement could take place in 1 or 2 years of the 5-year period as was apparently intended here. Moveover, Apex does not specify how much of a lower figure it expected for new equipment costs. In our view, this does not change the fact that Apex's underlying objection is that no cost figure for new equipment was set forth in the IFB.

Under our Bid Protest Procedures, alleged solicitation improprieties which are apparent prior to bid opening shall be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983). Since Apex did not object to the IFB's failure to include new equipment costs until after bid opening, Apex's protest on this issue is untimely.

New Equipment Amortization

Next, Apex contends that there is no justification for the Marine Corps' evaluation of GOCO bids using a depreciation schedule for new laundry equipment purchases that is based on a useful life expectancy of 10 years for new equipment as was done. According to Apex, the 10-year period is unreasonably short. Apex emphasizes that OMB Circular A-76 shows a 13-year useful life expectancy for new laundry and drycleaning equipment. Apex also notes that Army Technical Bulletin TB43-0002-30, July 15, 1974, shows a 15-year life expectancy for such equipment. Apex argues that the Marine Corps' use of a 10-year life expectancy was prejudicial to it because its bid would be the low evaluated bid if the depreciation period was as short as 11.15 years.

In addition, Apex states that exhibit 1 to the IFB, which sets forth the date of installation and condition of each piece of equipment at the Camp Lejeune laundry facility, reveals "little correlation between age and condition." Apex claims that the oldest pieces of equipment are shown by exhibit 1 to be in good or excellent condition while one of the newest equipment items, a folder/cross folder installed in December 1980, is rated as being in only fair condition.

The Marine Corps states that it uses the laundry equipment depreciation schedule specified in paragraph 7(c) of Marine Corps Order 7310.45B, Laundry and Drycleaning Cost Accounting (December 5, 1980). The Marine Corps states that paragraph 7(c) provides for a "straight line" depreciation schedule based on a life expectancy of 10 years for equipment procured after October 1, 1976. The Marine Corps further points out that this 10-year period is also consistent with Marine Corps Order 11016.10C, Assignment of Life Expectancies of Classes 3 and 4 Plant Property (February 1, 1978). Thus, the Marine Corps takes the position that the depreciation schedule it used in evaluating new equipment costs in the GOCO bids involved an internal agency policy matter which Apex has not shown to be unreasonable.

As to the 13-year life expectancy period set forth in the revised OMB Circular A-76, the Marine Corps points out that paragraph 12 of the revised Circular provides that it need not be applied when a cost comparison using the March 1979 Circular was begun prior to August 4, 1983, the revised Circular's date of issuance. The Marine Corps states that the cost comparison here was begun long before August 4, 1983. In addition, the Marine Corps argues that paragraph 9(d) of the revised Circular implies that it is not effective as of the August 4, 1983, issuance date because a period of 90 days is provided for agency implementation. The Marine Corps states that the appropriate regulatory implementation of the revised Circular within the Department of Defense had not occurred as of the time Apex filed its protest, September 2, 1983.

In response, Apex concedes that the projection of the estimated cost to the government of in-house performance of laundry services at Camp Lejeune was undertaken before August 4, 1983. However, Apex emphasizes that the comparison which it questions is the cost of GOCO performance compared with the cost of COCO performance. In this regard, Apex emphasizes that the initial Marine Corps' bid comparison, which showed Apex's GOCO bid to be the low evaluated bid, did not involve any consideration for the depreciation of new equipment. According to Apex, the revised bid comparison, which did consider new equipment purchases and a 10-year depreciation schedule, was only first sent out under the contracting officer's letter dated August 15, 1983. Consequently, Apex contends that the provisions of the revised OMB Circular A-76 should have been followed by the Marine Corps since the work performed by the agency in revising its evaluation of the GOCO and COCO bids was begun after August 4, 1983.

GAO Analysis

In determining the application of revised OMB Circular A-76, we disagree with Apex that the comparison of the relative costs of GOCO versus COCO performance can be separated from the cost comparison of in-house performance versus contracting out. Apex admits that the projection of the estimate of the cost of government performance was undertaken well before August 4, 1983. Moreover, the record shows that the equipment replacement costs, which had not been taken into account prior to bid opening, affected the validity of the government's in-house estimate as well as the comparative evaluation of the GOCO and COCO bids. Therefore, the recalculations by the Marine Corps that were associated with taking into account the replacement of laundry equipment amounted, in our opinion, to nothing more than a revision to a cost comparison process that was undertaken prior to the effective date of the revised OMB Circular.

Depreciation scheduling of new laundry equipment was not covered in any detail by the 1979 version of OMB Circular A-76. Consequently, the issue in our view is whether the Marine Corps was reasonable in depreciating on a 10-year basis new equipment to be purchased as part of the renovation of the Camp Lejeune laundry facility. Apex basically argues that a 10-year depreciation schedule for laundry equipment is much too short. We find that Apex has failed to establish that depreciating new equipment purchases on a 10-year basis was unreasonable. The Marine Corps states that since 1976 it has adopted the guidelines of the Internal Revenue Service for depreciating laundry and drycleaning equipment. More specifically, Internal Revenue Service Publication 534 (1978 ed.) sets forth an average depreciation guideline of 10 years for such equipment, with a lower limit of 8 years and an upper limit of 12 years. Apex points to Army Technical Bulletin TB43-0002-30 and OMB Circular A-76 as examples of longer depreciation periods for laundry and drycleaning equipments. The mere fact that these publications allow for a depreciation period greater than 10 years does not, in the circumstances, require the conclusion that the Marine Corps' decision to use a 10-year depreciation period was unreasonable.

With respect to Apex's claim that the older pieces of equipment at the Camp Lejeune facility are actually in better condition than newer pieces of equipment there, we fail to see the relevance of this to the decision to depreciate new equipment to be purchased in the future. Apex's claim relates to an argument that it is unnecessary for the Marine Corps to purchase some of the new equipment rather than how such new equipment will be depreciated once it is purchased.

<u>Cost of New Equipment</u>

Apex contends that the Marine Corps' proposed new equipment cost figure is only a budget figure and, as such, cannot provide any basis for an accurate evaluation of the GOCO and COCO bids. Apex argues that there is no assurance that funds will actually be available for the amount budgeted. Apex points out that many of the individual items in the Marine Corps Fiscal Year 1984 budget for the purchase of new laundry equipment appear in the agency's earlier budgets, some as far back as Fiscal Year 1979. More importantly in Apex's opinion, the IFB shows that much of the equipment that has been budgeted for replacement is still in "good working order." Apex questions the economics of replacing equipment that is performing satisfactorily simply because money may be made available for such replacement. In this regard, Apex notes that the Marine Corps' own laundry manual provides that equipment which is in good operating condition will not be replaced solely because it has reached its life expectancy.

Therefore, Apex takes the position that the proper way to take depreciation on new equipment is to compute it starting from the time the new equipment is actually installed, rather than from the time such equipment is budgeted.

The Marine Corps argues that it should not be limited in making a cost comparison study to using only firm contract prices in evaluating equipment replacement costs. If it were so limited, the Marine Corps claims that no substantial, foreseeable government expense could be taken into account in the conduct of cost comparison studies. More specifically, the Marine Corps states that the costs for the laundry equipment that is being replaced in the event of a GOCO contract are in the agency's Fiscal Year 1984 budget. The Marine Corps further states that the individual items of laundry equipment are commercial, "off-the-shelf" items of "relatively low dollar value" and that the procurement leadtime for these items is relatively short, 6 months or less. The Marine Corps points out that because there is some procurement leadtime, new equipment costs have not been evaluated in Apex's bid for Fiscal Year 1984, only Fiscal Years 1985 and 1986. Finally, the Marine Corps states that the budget figure for new equipment has recently been revised from $881,000 to $1,339,174 in order to take into account rising costs for the equipment.

GAO Analysis

We find that it was reasonable for the Marine Corps to use its budget estimate as an evaluation figure for new equipment purchases. Apex offers no support for its assertion that the Marine Corps' budget figure is too unreliable to provide a basis for bid evaluation. On the other hand, the Marine Corps has indicated that its budget figure accurately represents the cost involved in the purchase of new equipment. Regardless of whether the $881,000 is a budget figure, the fact of the matter is that it is based on the expected cost for equipment that is essentially commercial and available "off-the-shelf." In this regard, the record also shows that the $881,000 figure was derived from actual commercial catalogue prices and informal vendor quotations obtained by the Marine Corps.

In our opinion, Apex's real objection is not the accuracy of the Marine Corps' estimate for new laundry equipment purchases, but rather the fact that such purchases are contingent upon funds being available. As noted by Apex, this, in turn, is contingent upon an appropriation bill being approved by Congress and upon the Office of the Secretary of Defense authorizing the purchases. The record shows that the costs for the new equipment are presently contained in the Fiscal Year 1984 budget for the Department of Defense. Apex highlights the fact that at the time the Marine Corps was evaluating the bids under the IFB, the Department of Defense's Fiscal Year 1984 budget had not been approved by Congress. Presumably, the contingencies upon which funds for the purchasing of new equipment will be made available have now decreased since the Department of Defense has been operating under its Fiscal Year 1984 budget from October 1, 1983. In any event, while the Marine Corps may have been evaluating the bids under the IFB on the contingency that new equipment funds would be available, we see no reason to exclude new equipment costs from the evaluation where the Marine Corps does have an actual need for new equipment and where there is every indication that the Marine Corps is taking the necessary steps to make funding available for its purchase.

Turning to Apex's argument that existing equipment at the Camp Lejeune laundry facility should not be replaced when such equipment is in satisfactory working order, the determination of the needs of the government and the methods of accommodating those needs are primarily the responsibility of contracting agencies. We will not question an agency's assessment of its needs unless the protester demonstrates that the determination is clearly unreasonable. See Tri-Country Fence Co., Inc., B-209262.2, April 12, 1983, 83-1 CPD 381. We find that Apex has failed to demonstrate that the Marine Corps' need for $881,000 worth of new equipment was unreasonable. The record shows that the Marine Corps made a detailed study of the condition and useful life of the Camp Lejeune laundry equipment in arriving at its determination as to the amount of equipment that needed to be replaced. In addition, the record reveals that there was more to the Marine Corps' determination to replace much of the equipment than the consideration of the equipment's current condition. Other considerations included: (1) availability of repair parts on equipment no longer being manufactured; (2) the economy of repairs on older equipment; and (3) obsolescence of the existing equipment because of inefficiency in terms of labor and energy usage costs.

Evaluation of GOCO and COCO Bids

Apex contends that the cost of having to replace equipment at the Camp Lejeune laundry facility should have been considered as part of standby maintenance in the evaluation of National's COCO bid. Apex points out that under the terms of the IFB, the costs of standby maintenance are part of the evaluation formula for COCO bids. According to Apex, it is unrealistic to assume that all of the existing laundry equipment at Camp Lejeune will continue to be operable if maintained in a standby status, but will have to be replaced if operated by a GOCO contractor. Apex asserts that laundry equipment that is not used may still "deteriorate."

The Marine Corps states that in the event a contract is awarded to National on the basis of its COCO bid, there is no intention to replace any of the existing Camp Lejeune laundry equipment regardless of the equipment's condition. The Marine Corps states that, instead, the equipment will be merely preserved because the camp's laundry facility will not be reopened except in the case of an emergency.

In response, Apex questions how the Marine Corps intention not to replace any equipment can be carried out while the Camp Lejeune laundry facility is maintained on a standby basis during the performance of National's COCO contract. Apex charges that the Marine Corps cannot say that the facility is being maintained on a standby basis if a piece of laundry equipment "collapses" without being repaired or replaced. In Apex's opinion, the Marine Corps' failure to consider this kind of possibility violates the evaluation formula set forth in the IFB.

GAO Analysis

We agree with the Marine Corps that it is unreasonable to assess new laundry equipment costs against National's COCO bid. In our opinion, amendment 0004 to the IFB did not provide for an evaluation of new equipment costs with regard to COCO bids. Unlike the amendment's "system renovation" factor for GOCO bids, only building renovation costs would be assessed against COCO bids. Taking this factor in conjunction with the standby maintenance factor, it is clear that the IFB's scheme for the evaluation of COCO bids excluded costs not associated with the renovation of the Camp Lejeune building itself. In addition, we do not feel that the word "maintenance" as commonly understood includes the total replacement of the item being maintained. In any event, we cannot question the Marine Corps' position that it would not incur replacement costs while the equipment is being maintained on a standby basis.

A contracting agency may not evaluate bids in a manner which is inconsistent with the evaluation scheme set forth in the solicitation. To permit otherwise would be contrary to the legal requirement that all evaluation factors be made known in advance of bid opening so that all bidders can compete on an equal basis. Northern Virginia Van Lines, Inc., B-204518, December 21, 1981, 81-2 CPD 485. Since the IFB did not provide, in our view, for using new laundry equipment costs in the evaluation of COCO bids, it would not have been proper for the Marine Corps to evaluate National's bid on this basis.

We dismiss Apex's protest in part and deny it in part.

for Milton J. Socolar
Comptroller General
of the United States